

THE STATE OF NEW HAMPSHIRE

COOS COUNTY, ss.

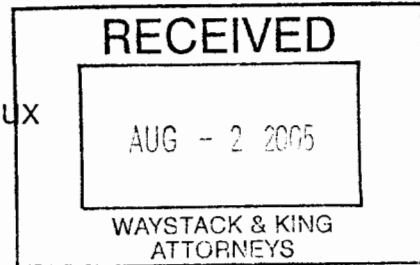
SUPERIOR COURT

Docket No. 04-C-72

Joseph Lemieux and Marie Lemieux

v.

Atlantic Leasing Corporation,
Equiptech, Inc.
and
Sani-Tech Systems, Inc.



ORDER ON MOTION TO DISMISS

Background:

This is a products liability claim arising out of an incident that occurred on July 24th, 2002 in the Town of Lancaster. The plaintiff, Joseph Lemieux, an employee of the Town of Lancaster, was operating an auger/compactor (the auger) and claims that as the result of the metal gate on the auger falling open he suffered severe and significant permanent injuries.

The plaintiff has sued several defendants, including defendant Sani-Tech Systems, Inc. (hereinafter Sani-Tech).

Sani-Tech has filed a motion to dismiss all claims against it for lack of personal jurisdiction (Docket No. 14), to which the plaintiffs have objected.

CLERK'S NOTICE DATE

8-01-05

CC:

Frizzell
Feeney
Stark

Legal Standard:

The issue raised by defendant's motion to dismiss is whether defendant's conduct constitutes minimum contacts with the state of New Hampshire to vest jurisdiction in this claim. "In ruling on a motion to dismiss, the Court must determine whether the facts as pled are sufficient under the law to constitute a cause of action." Jay Edwards, Inc. v. Baker, 130 N.H. 41, 44 (1987); Williams v. O'Brien, 140 N.H. 595 (1995). In rendering such a determination, the Court must "assume the truth of the facts alleged in the plaintiff's pleadings and construe all reasonable inferences in the light most favorable to him." Harrington v. Brooks Drugs, 148 N.H. 101, 104 (2002) (quoting Hobin v. Coldwell Banker Residential Affiliates, 144 N.H. 626, 628 (2000)). The Court need not accept as true, however, statements in the complaint "which are merely conclusions of law." Karch v. BayBank FSB, 147 N.H. 525, 530 (2002) (quoting Thompson v. Forest, 136 N.H. 215, 216 (1992)).

Utilizing this standard, the Court must determine whether the plaintiff may properly maintain the instant action against Sani-Tech in New Hampshire. In responding to this question, the Court must determine "whether the defendant purposely established minimum contacts in the forum state," and consider these contacts in light of other factors to determine whether the assertion of personal jurisdiction will comport with fair play and substantial justice." Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475 (1984).

The plaintiff bears the burden of demonstrating facts sufficient to establish personal jurisdiction; he need make only a *prima facie* showing of jurisdictional facts to defeat a motion to dismiss. See Lyme Timber Co. v. DSF Investors, 150 N.H. 557, 559 (2004). Although the facts alleged in his pleadings are assumed to be true, when those facts relate to personal jurisdiction, he must offer affirmative proof. See Staffing Network v. Pietropaolo, 145 N.H. 456, 457 (2000).

Determining whether a defendant is subject to personal jurisdiction involves a two-part inquiry. Metcalf v. Lawson, 148 N.H. 35, 37 (2002). "First, the State's long-arm statute must authorize such jurisdiction. Second, the requirements of the Federal Due Process clause must be satisfied." Id. (brackets omitted). Because the Court construes the State's long-arm statute as permitting the exercise of jurisdiction to the extent permissible under the Federal Due Process clause, the Court's primary analysis relates to due process. Id.

"[A] court may exercise personal jurisdiction over a nonresident defendant if the defendant has certain minimum contacts with the forum such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." Id. (quotation omitted). "Jurisdiction can be 'general,' where the defendant's contacts with the forum state are 'continuous and systematic,' or 'specific,' where the cause of action arises out of or relates to the defendant's forum-based contacts." Staffing Network v. Pietropaolo, 145 N.H. 456, 458 (2000)(quotations omitted).

Analysis:

The plaintiff's writ alleges that he was injured in the State of New Hampshire while working near or around the auger that was manufactured by Sani-Tech (Plaintiff's Declaration, ¶¶ 13-14). Plaintiff also pleads that his injuries were proximately caused due to a defect in the auger (Plaintiff's Declaration, ¶¶ 14, 17-18 and 24-25); additionally plaintiff has pled that the auger was manufactured, shipped and placed in the stream of commerce by Sani-Tech. (Plaintiff's Declaration ¶¶ 8, 16-17 and 21-24).

Sani-Tech admits that it manufactures and sells trash compactors to dealers nationwide. Although it denies that it has any direct marketing or advertising in the State of New Hampshire (Kaptein Affidavit, ¶¶ 13 and 14), Sani-Tech admits that it placed the product involved in this case into the stream of commerce by selling it to Great Northern Recycling, Inc., Mechanic's Falls, Maine. (Kaptein Affidavit, ¶ 28). Sani-Tech also admitted that it inspected and tested the compaction system at its plant in Washington prior to placing the product into the stream of commerce (Kaptein Affidavit, ¶ 38). Sani-Tech admits that it received various documents relating to this auger from the purchaser of this product, the Town of Lancaster. (Kaptein Affidavit).

RSA 510:4 provides in relevant part that "any person who is not an inhabitant of this state and who, in person or through an agent, transacts any business within this state, commits a tortious act within the State, or has the ownership, use, or possession of any real or personal property situated in this state, submits himself, or his personal representative, to the

jurisdiction of the courts of this state as to any cause of action arising from or growing out of the acts enumerated above."

The New Hampshire Legislature enacted RSA 510:4 to "provide resident plaintiffs a convenient forum in which to sue for injuries attributable to foreign defendants." Phelps v. Kingston, 130 N.H. 166 (1987).

Sani-Tech relies in support of its motion to dismiss on various factors, including the fact that it did not sell the auger to the Town of Lancaster nor participate in the maintenance or repair of the compactor. Sani-Tech had no offices, agents or property in New Hampshire. Sani-Tech is a very small corporation located in the State of Washington.

Sani-Tech relies on RSA 293-A:15.10, governing jurisdiction over foreign corporations in New Hampshire. RSA 293-A:15.10 is entitled "Service on Foreign Corporations." The defendant argues, *inter alia*, that RSA 293-A:15.10 limits the Court's analysis in determining whether minimum contacts have been met. The Court disagrees.

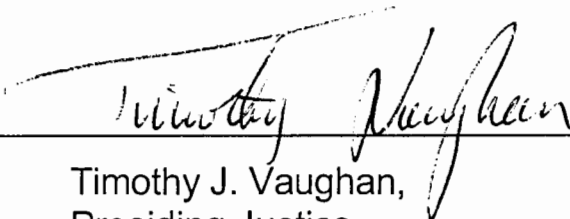
The defendant Sani-Tech manufactured the piece of equipment that plaintiff alleges caused his injury. The piece of equipment was sold to a distributor in Maine who ultimately sold the product to the end user in Lancaster, New Hampshire. The plaintiff was injured while using the equipment in Lancaster, New Hampshire. The defendant admits that it manufactures its product for sale and distribution throughout the United States. It would be illogical for Sani-Tech to assume that it can escape liability simply by ending its physical connection with the product at the border of the State of Washington.

Conclusion:

For the reasons set out above, the defendant's motion to dismiss is DENIED.

So Ordered.

Dated: 7/29/05



Timothy J. Vaughan,
Presiding Justice